

TO : Office of Training 11/08/31 : CIA-RDP78-06365A000800010027-3
Approved For Release 2001/08/31 : CIA-RDP78-06365A000800010027-3

OGC Has Reviewed

FROM : Office of General Counsel

SUBJECT: Determination of Work Week Applicable to Personnel Assigned to
Certain Training Facilities and/or Courses

STATINTL

1. Reference is made to your memorandum of 1 July 1952 wherein the question is raised as to overtime compensation in connection with Agency-sponsored training programs and to conversations with Messrs. [redacted] of this office. You state that regulations as proposed by you in paragraph 6 may be adopted if it is determined:

a. That applicable general laws are permissive rather than mandatory, or,

b. That CIA is exempt from the provisions of such general laws by virtue of the several organic acts applicable to it.

2. Current pay schedules including overtime compensation are based on the Federal Employees Pay Act of 1945 (Public Law 106, 79th Congress, June 30, 1945; 5 USCA 901 et seq.), as amended. Coverage of the act is set forth at 5 USCA 901 which provides that subject to certain exemptions not applicable to CIA, the act "...shall apply to all civilian officers and employees in or under the executive branch of the Government..." It is apparent that as of the date of its inception, CIA was subject to the provisions of Federal Employees Pay Act of 1945. The Act (5USCA 945) with respect to the issuance of regulations provides as follows:

"The Civil Service Commission is authorized to issue such regulations, subject to the approval of the President, as may be necessary for the administration of the provisions of sections 84, 663, 667, 672a, 673 of this title, and this chapter in so far as said sections affect officers and employees in or under the executive branch of the Government."
(Emphasis supplied)

It is also provided (5USCA 911) that "Officers and employees to whom this subchapter applies shall, in addition to their basic compensation, be compensated for all hours of employment, officially ordered or approved in excess of forty hours in any administrative workweek, at overtime rates as follows..." In Executive Order 9578 of June 30, 1945 the President approved the original Federal Employees Pay Regulations which were issued by the Civil Service Commission under authority of the Federal Employees Pay Act of 1945 (see 5 USCA 945 referred to above) and which, as indicated, specifically exempted certain

agencies. The regulations, as amended, with respect to overtime, night, and holiday pay are set forth at 5 CFR, 1951 Supplement, in Subpart C, paragraph 25.201 et seq. The amendment to the regulations setting up the new Subpart C which excepted officers and employees of the CIA became effective 18 August 1950 (15 F. R. 5492) and paragraph 25.201 thereof, provides:

"Employees to whom this subpart applies. This subpart applies to all civilian officers and employees in or under the executive branch of the United States Government.... except those specified in 25.202. (Sec. 101, 59 Stat. 285; 5 USC 901)"

Paragraph 25.202 (8) specifically excepts the Central Intelligence Agency. Paragraph 25.221 provides:

"Authorization of overtime compensation. (a) Officers and employees to whom this subpart applies shall be paid overtime compensation computed as provided in 25.223, for all hours of employment officially ordered or approved in excess of forty hours in any administrative workweek, including irregular or occasional overtime duty."

Provision is also made for compensatory time-off in lieu of overtime pay.

3. a. The Federal Employees Pay Act of 1945 has been amended and supplemented by various acts including the Classification Act of 1949, which by its specific provisions exempts CIA. It is clear that the Federal Employees Pay Regulations do not apply to CIA. The question which is then raised is whether the regulations have the effect of removing the CIA from the basic coverage of the 1945 Pay Act. Of course, if this could be definitely answered in the affirmative, you would have no problem.

b. At this point it should be stated with respect to paragraph 1 (b) above that we do not believe the Agency is exempt from the provisions of the overtime compensation statutes by virtue of the several organic acts applicable to it.

4. a. For reasons hereinafter set forth, it is believed unnecessary to express an opinion on your other question as to whether the general laws "are permissive rather than mandatory." Preliminary thereto, it should be stated that Agency policy has been and is, to adhere to the usual compensation and overtime provisions of the Government under the terms of the Federal Employees Pay Act of 1945, as amended.

b. Even if the authority to promulgate regulations set forth at 5 USCA 945 (paragraph 2 above) be construed as (1)

authorizing the Civil Service Commission to issue regulations only to the extent that they may be necessary for the substantive of the substantive provisions of the Act and (2) that this authority would therefore not extend to exempting CIA from the coverage of the 1945 Pay Act, we would construe the stated exemption of CIA from the operation of the pay regulations as tantamount to a declaration of policy by the Civil Service Commission that it will not attempt to inject itself into the operations of the internal administrative machinery of CIA. We consider it in effect to be an admission by the Commission that such interference would not, from the practical standpoint, be desirable or feasible. This is in accordance with the tacit understanding between this Agency and the Commission.

5. As has been stated, Agency policy has been to adhere to the usual overtime and compensation provisions of the Government under the Federal Employees Pay Act of 1945. This policy coupled with the obvious doubt as to whether the Agency, regardless of the provisions of the Pay Regulations, is exempted from the 1945 Pay Act, serves to re-enforce the desirability, as seen by this office, of considering the problem from its practical administrative aspects. This has been done and is reported hereafter.

6. a. Preliminary investigation into the background of the overall picture reveals that other Governmental agencies, including the Veterans Administration and particularly the Department of the Navy, which has a large and varied training program, in general treat a full-time educational program in the manner that you propose. We refer to the situation where an individual is relieved of his normal duties and is assigned, for example, to a full-time graduate study program at a university. The assignment is treated as a "package" situation, in which the employee follows the regular academic calendar, with the successful completion of the course as the object. As to part-time training, all effort is made by other agencies to keep this within the regular workweek, it being generally felt, and the feeling is concurred in by this office, that Congress, which has always been reluctant to expand training at additional expense to the Government, would look with a critical eye, to say the least, on the payment of overtime compensation for an Agency-sponsored training program.

b. In this connection and with reference to paragraph 3 of your memorandum, the Comptroller General appears to have promulgated no published decisions on this subject. However, an unpublished decision of the Comptroller General, B-106750, dated 14 January 1952, copy of which is attached, includes the following:

"With respect to your statement that you were required to work an extra hour each day, apparently you refer to the daily period wherein you, as an instructor, received training in message sending and handling procedures at the said school.

However, since such training manifestly was to promote the

~~efficiency of the student/instructor and was 4.00/8.00/6.00/7.00~~

It is thus seen that the position of the Comptroller General against paying overtime compensation for training performed outside of regular working hours is a strong one.

c. It is believed by this office that payment of night differential would not be appropriate. In this connection see 25 Comp. Gen. 62 which sets forth the following at page 66:

"The night differential of 10 percent is payable only for that portion of a regularly scheduled tour of duty falling between 6:00 p.m. and 6:00 a.m. The differential is not payable for any period outside of a regularly scheduled tour of duty."

7. After a careful review of your memorandum in the light of the foregoing considerations, this office perceives no legal objection to the implementation of regulations in tenor as indicated by paragraph 6 of your memorandum.

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STATINTL

Attachment

OGC/OEP/GHK:1mm;mb

Distribution:

Orig - Addressee

7 - OGC

ORIGINAL DOCUMENT MISSING PAGE(S):

Missing Attachment